HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 661 of 2007

Between:

M/s Andhra Sugars Limited,
Venkatarayapuram, Tanuku.

… Appellant

And

Labour Court, Guntur, rep. by its Presiding Officer
and another.

… Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri V. Srinivas

Counsel for respondent No.2: Smt. D. Radha Rani

August 21, 2007

Per G.S. Singhvi, CJ

Feeling aggrieved by the interlocutory order passed by the learned Single Judge whereby he confirmed the ad-interim order dated 28.12.2005 passed in WPMP No.35524 of 2005 subject to the condition of payment of wages to respondent No.2 in terms of Section 17-B of the Industrial Disputes Act, 1947 (for short, 'the Act'), the appellant has preferred this appeal under Clause 15 of the Letters Patent.

Respondent No.2 was engaged as a mazdoor in the employment

of the appellant company. After he had worked for 25 years, the management of the company vide its letter dated 09.4.1999 informed respondent No.2 that resignation tendered by him on 16.3.1999 has been accepted. Respondent No.2 challenged the same by raising an industrial dispute under Section 2-A (2) of the Act, as amended by Andhra Pradesh Act No.32 of 1987.

In the statement of claim filed by him, respondent No.2 pleaded that he and three others were called by the management and their signatures were obtained on blank papers in the light of some incident which took place on 17.3.1999 at the time of unloading of a lorry; that they were not allowed to join duty with effect from 18.3.1999 and that on 30.4.1999, he came to know about his removal from service by way of acceptance of the alleged resignation.

In the counter filed by the management of the appellant, it was pleaded that respondent No.2 had voluntarily resigned on 16.3.1999 and his resignation was accepted on 09.4.1999.

The learned Presiding Officer of Labour Court, Guntur, after considering the pleadings and evidence of the parties, rejected the theory of voluntary resignation by respondent No.2 and held that the acceptance of the so-called resignation of respondent No.2 amounted to termination of his service. Accordingly, he passed award dated 28.6.2005 for reinstatement of respondent No.2 with consequential benefits.

The appellant challenged the award in Writ Petition No.27672 of 2005. While admitting the writ petition on 28.12.2005, the learned Single Judge passed an ex parte interim order in WPMP No.35526 of 2005 and stayed the award.

On notice, respondent No.2 filed WVMP. No.1042 of 2007 for vacating the interim order by asserting that the award of the Labour Court was legally correct and on account of stay order passed by the Court he and his family were facing starvation. The learned Single Judge partly allowed the application and modified the interim order by

directing the writ petitioner (the appellant herein) to pay wages to respondent No.2 in terms of Section 17-B of the Act. For the sake of reference, the order of the learned Single Judge, which is subject matter of challenge in this appeal, is reproduced below:

> "The writ petition is filed challenging the award passed by the Labour Court directing for reinstatement of respondent/workman into service with full back wages, continuity of service etc.
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> While admitting the writ petition, the Court by order dated 28.12.2005 in WPMP.No.35524 of 2005 granted interim stay as prayed for.
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> Now a vacate stay petition has been filed by the second respondent/workman seeking to vacate the said order. The vacate stay petitioner asserted that he is out of employment and he has not gainfully employed as of now.
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> Under those circumstances, the interim order passed by this Court in WPMP.No.35524 of 2005 dated 28.12.2005 is made absolute subject to the condition of petitioner depositing wages under Section 17-B of the I.D. Act every month regularly from June, 2007 and also arrears from the date of award till June, 2007 within a period of two months from today. In default, the interim order shall stand vacated without further reference to the Court."

Shri V. Srinivas, learned counsel for the appellant relied on the judgment of the Supreme Court in **Uttaranchal Forest Development Corporation v. K.B. Singh**[1] and argued that the impugned order is liable to be set aside because the learned Single Judge did not consider the issue of applicability of Section 17-B of the Act in a correct perspective. He emphasized that respondent No.2 had not produced any evidence to prove that he was not gainfully employed and yet the learned Single Judge burdened the appellant with the liability to pay backwages in terms of Section 17-B.

We have given serious thought to the arguments of the learned counsel, but have not felt persuaded to set aside the order under challenge. A perusal of the record shows that with a view to avoid compliance of Section 17-B, the management of the appellant company had pleaded that respondent No.2 is working as Watchman in a school. In paragraphs 8 to 10 of the counter-affidavit filed by him,

respondent No.2 categorically denied the appellant's assertion that he was working as a Watchman in a school and that the condition of his family was extremely serious. For the sake of reference, these paragraphs are reproduced below:

> "8. I submit that according to the petitioner company they have accepted my resignation on 05.4.1999 and applied for gratuity on 15.4.1999; but they have not sent any amount till 27.5.1999 and that it clearly goes to show that I have not tendered my resignation and it is only with an oblique motive and mala fide intention and with a view to remove me from service, they have devised a premeditated device to remove me from service prejudicially on some pretext or the other, detrimental to the interests of my sustenance of eking out my livelihood through the job in the petitioner company.
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> 9. The petitioner company has stated that it has reliably come to know that I am working as a Watchman in a School at present and I am gainfully employed. I submit that the above plea is taken with a view to distraught and to deliberately avoid paying the back-wages legitimately due to me. Thus, the petitioner company cannot simply say without any substantial recorded proof merely on surmises and conjectures that I am gainfully employed and thus without there being any evidence much less any proof of record, the contention of the petitioner company in this respect is a "misnomer" and totally unbelievable by any stretch of imagination.
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> 10. I humbly submit this Hon'ble Court in WPMP No.35524 of 2005 in W.P.No.27670 of 2005 has granted "interim stay" on 28.12.2005 without there being any order complying with Section 17-B of the Industrial Disputes Act, 1947. I submit that I am working as "Mazdoor" for the past 25 (twenty-five) years in the petitioner company without any blemish and I am the only breadwinner of my entire family and if I am not employed anywhere, my entire family would be subjected to severe starvation and their lives would be at peril, depriving the legitimate source of eking out my livelihood, since myself and my entire family are reeling under abject poverty."

On its part, the appellant did not produce any evidence before the Labour Court to prima facie establish that after acceptance of his so-called resignation, respondent No.2 was gainfully employed. Even before this Court, no evidence has been produced to prove that respondent No.2 is working as Watchman in a school. If there was any grain of truth in the assertion of the appellant that respondent No.2 was employed as Watchman in a school, then it would have obtained and

produced the record relating to his employment or at least given the particulars of the school where he was employed. However, the fact of the matter is that neither the particulars of the school have been given nor any record has been produced to prove that respondent No.2 is gainfully employed. Therefore, we do not find any reason to interfere with the discretion exercised by the learned Single Judge to call upon the appellant to pay wages to respondent No.2 in terms of Section 17-B as a condition for continuing the ad-interim order.

It is also apposite to mention that Section 17-B was introduced to relieve the workman of the hardship which would be caused to him on account of stay of the award of reinstatement passed by the competent adjudicatory forum constituted under the Act. In **Dena Bank v. Kiritikumar T. Patel**[2], the Supreme Court referred to the object of Section 17-B and observed:

> " It would thus appear that the object underlying the enacting of the provisions contained in Section 17-B is to give relief to the workman in whose favour an award of reinstatement has been passed by the Labour Court and the said award is under challenge in the High Court or this Court. The said relief has been given with a view to relieve the hardship that would be caused to a workman on account of delay in implementation of the award as a result of the pendency of the proceedings in the High Court or this Court."

In **Ch. Saraiah v. Executive Engineer, Panchayat Raj Department**[3], the Supreme Court reversed the order passed by the Division Bench of the High Court which had set side the direction of the learned Single Judge for compliance of Section 17-B and observed as under:

> " Having examined the provisions of Section 17-B of the Industrial Disputes Act, we are of the considered view that the court has no jurisdiction to direct non-compliance with the same when the condition precedent from passing an order in terms of Section 17-B of the Act is satisfied, and this being the legislative mandate, the Division Bench of the High Court committed serious error in interfering with the direction of the learned Single Judge."

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, W.A.M.P.No.1317 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

August 21, 2007

C.V. NAGARJUNA REDDY, J

svs

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[1] (2005) 11 SCC 449

[2] (1999) 2 SCC 106

[3] (1999) 9 SCC 229